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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,532	02/11/2004	Kenny C. Gross	SUN03-0041	5150
57960	7590	09/13/2006		
SUN MICROSYSTEMS INC. C/O PARK, VAUGHAN & FLEMING LLP 2820 FIFTH STREET DAVIS, CA 95618-7759				
			EXAMINER BONURA, TIMOTHY M	
			ART UNIT 2114	PAPER NUMBER

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/777,532		GROSS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tim Bonura		2114	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-26 and 28 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/17/05 &amp; 4/3/06</u>                                     | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

- **Claims 14-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter**
- **Claims 1-4, 6-10, 13-17, 19-24, 26, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel, et al, U.S. Patent Publication Number 2003/0065986**
- **Claims 5 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Fraenkel, et al, U.S. Patent Publication Number 2003/0065986 and further in view of Harper, et al, U.S Patent Number 6,629,266**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). There is no claim 27, but there is a claim 28. The examiner believes that the applicant simply misnumbered the last independent claim, as opposed to a claim 27 missing from the application. Please correct.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 14-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Regarding claim 14, the claim states a "computer-readable storage medium", which as defined by the specification of page 7 can contain transmission medium and carrier waves.

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Both transmission medium and carrier are non-statutory subject matter as defined under USC 101 and therefore cannot be claimed.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 6-10, 13-17, 19-24, 26, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel, et al, U.S. Patent Publication Number 2003/0065986.

7. Regarding claim 1:

a. Regarding the limitation of “detecting a failure sequence or other undesirable system behavior in a computer system and subsequently taking a corresponding remedial action,” Fraenkel disclose a system with a server agent configured to monitor a server resource and detect loss of performance on the client-side system. (Paragraph 0020). The root cause analysis (RCA) reviews the problem and reports it to an administrator for action. (Paragraphs 0021-0023).

b. Regarding the limitation of “receiving instrumentation signals from the computer system while the computer system is operating,” Fraenkel disclose a system with a sever agent that is configured to monitor server resource utilization parameters. (Paragraph 0020).

c. Regarding the limitation of “determining from the instrumentation signals if the computer system is in a failure sequence that is likely to lead to undesirable system

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behavior, such as a system crash," Fraenkel disclose a system with monitoring agents that can compare monitored data with user defined alert conditions that indicate system failures. (Paragraph 0016)

d. Regarding the limitation of "wherein the determination involves considering predetermined multivariate correlations between multiple instrumentation signals and a failure sequence that is likely to lead to undesirable system behavior," Fraenkel disclose a system monitoring agents that monitor that can track that pass/fail rates of every transaction type and chart the findings in reports. (Paragraph 0014).

e. Regarding the limitation of "if the computer system is in a failure sequence that is likely to lead to undesirable system behavior, taking a remedial action," Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).

8. Regarding claim 2, Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).

9. Regarding claim 3, Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).

10. Regarding claim 4, Fraenkel disclose a system wherein an alarm alert to a system administrator can be sent by email with a webpage, which list these errors of the system. (Paragraph 0016).

11. Regarding claim 6, Fraenkel disclose a system with a RCA that can collect performance data and analysis it and can display the collection of data along with predefined performance parameters. (Paragraphs 0021 & 0023).

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12. Regarding claim 7, Fraenkel disclose a system wherein data collected in real-time and reported back to the monitoring controllers. (Paragraph 0014). The data is then display along side of the corresponding predefined performance parameters along with a color-coded system to note severity. (Paragraph 0023).

13. Regarding claim 8, Fraenkel disclose a system wherein the RCA will overload a system and thereby narrow down the error to a specific area of the system. (Paragraphs 0022-0023).

14. Regarding claim 9, Fraenkel disclose a system wherein the overloading by the RCA can occur recursively to drill down to even lower level parameters for the performance degradation. (Paragraph 0022).

15. Regarding claim 10, Fraenkel disclose a system wherein the overloading by the RCA can occur recursively to drill down to even lower level parameters for the performance degradation. (Paragraph 0022).

16. Regarding claim 13, Fraenkel disclose a system with operator-selected attributes. These can include ISP, organization, location, transaction types and other user defined attributes. (Paragraph 0015 & 0059).

17. Regarding claim 14:

f. Regarding the limitation of "detecting a failure sequence or other undesirable system behavior in a computer system and subsequently taking a corresponding remedial action," Fraenkel disclose a system with a server agent configured to monitor a server resource and detect loss of performance on the client-side system. (Paragraph 0020). The root cause analysis (RCA) reviews the problem and reports it to an administrator for action. (Paragraphs 0021-0023).

g. Regarding the limitation of "receiving instrumentation signals from the computer system while the computer system is operating," Fraenkel disclose a system with a

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server agent that is configured to monitor server resource utilization parameters.

(Paragraph 0020).

- h. Regarding the limitation of "determining from the instrumentation signals if the computer system is in a failure sequence that is likely to lead to undesirable system behavior, such as a system crash," Fraenkel disclose a system with monitoring agents that can compare monitored data with user defined alert conditions that indicate system failures. (Paragraph 0016)
  - i. Regarding the limitation of "wherein the determination involves considering predetermined multivariate correlations between multiple instrumentation signals and a failure sequence that is likely to lead to undesirable system behavior," Fraenkel disclose a system monitoring agents that monitor that can track that pass/fail rates of every transaction type and chart the findings in reports. (Paragraph 0014).
  - j. Regarding the limitation of "if the computer system is in a failure sequence that is likely to lead to undesirable system behavior, taking a remedial action," Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).
18. Regarding claim 15, Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).
19. Regarding claim 16, Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).

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20. Regarding claim 17, Fraenkel disclose a system wherein an alarm alert to a system administrator can be sent by email with a webpage, which list these errors of the system.

(Paragraph 0016).

21. Regarding claim 19, Fraenkel disclose a system with a RCA that can collect performance data and analysis it and can display the collection of data along with predefined performance parameters. (Paragraphs 0021 & 0023).

22. Regarding claim 20, Fraenkel disclose a system wherein data collected in real-time and reported back to the monitoring controllers. (Paragraph 0014). The data is then display along side of the corresponding predefined performance parameters along with a color-coded system to note severity. (Paragraph 0023).

23. Regarding claim 21, Fraenkel disclose a system wherein the RCA will overload a system and thereby narrow down the error to a specific area of the system. (Paragraphs 0022-0023).

24. Regarding claim 22, Fraenkel disclose a system wherein the overloading by the RCA can occur recursively to drill down to even lower level parameters for the performance degradation. (Paragraph 0022).

25. Regarding claim 23, Fraenkel disclose a system wherein the overloading by the RCA can occur recursively to drill down to even lower level parameters for the performance degradation. (Paragraph 0022).

26. Regarding claim 26, Fraenkel disclose a system with operator-selected attributes. These can include ISP, organization, location, transaction types and other user defined attributes. (Paragraph 0015 & 0059).

27. Regarding claim 28:

k. Regarding the limitation of "detecting a failure sequence or other undesirable system behavior in a computer system and subsequently taking a corresponding



remedial action," Fraenkel disclose a system with a server agent configured to monitor a server resource and detect loss of performance on the client-side system. (Paragraph 0020). The root cause analysis (RCA) reviews the problem and reports it to an administrator for action. (Paragraphs 0021-0023).

l. Regarding the limitation of "receiving instrumentation signals from the computer system while the computer system is operating," Fraenkel disclose a system with a sever agent that is configured to monitor server resource utilization parameters. (Paragraph 0020).

m. Regarding the limitation of "determining from the instrumentation signals if the computer system is in a failure sequence that is likely to lead to undesirable system behavior, such as a system crash," Fraenkel disclose a system with monitoring agents that can compare monitored data with user defined alert conditions that indicate system failures. (Paragraph 0016)

n. Regarding the limitation of "wherein the determination involves considering predetermined multivariate correlations between multiple instrumentation signals and a failure sequence that is likely to lead to undesirable system behavior," Fraenkel disclose a system monitoring agents that monitor that can track that pass/fail rates of every transaction type and chart the findings in reports. (Paragraph 0014).

o. Regarding the limitation of "if the computer system is in a failure sequence that is likely to lead to undesirable system behavior, taking a remedial action," Fraenkel disclose a system that if an alarm is generated due to a system degradation towards failure, a notification a sent to system administrator. (Paragraph 0016).

***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

30. Claims 5 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Fraenkel, et al, U.S. Patent Publication Number 2003/0065986 as applied to claims 1 and 14 above, and further in view of Harper, et al, U.S Patent Number 6,629,266.

31. Regarding claim 5, Fraenkel discloses a system with Fraenkel disclose a system with a server agent configured to monitor a server resource and detect loss of performance on the client-side system. (Paragraph 0020). The root cause analysis (RCA) reviews the problem and reports it to an administrator for action. (Paragraphs 0021-0023). However, Fraenkel does not disclose a system that can kill a process. Harper discloses a system wherein a software packet is about to experience failure and the system administrator, upon being alerted to the failure, can initiate a graceful outage of the process. (Lines 12-23 of Column 4). It would have been obvious to one of ordinary skill at the time of the invention to combine the prior art of Fraenkel with the prior art of Harper. One of ordinary skill in the art would have been inclined because Fraenkel system discloses that the system administrator can isolate and correct the problem.

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Harper files the need on the system of Fraenkel by providing a mean of correcting a problem in a system, via graceful outage of a process.

32. Regarding claim 18, Fraenkel discloses a system with Fraenkel disclose a system with a server agent configured to monitor a server resource and detect loss of performance on the client-side system. (Paragraph 0020). The root cause analysis (RCA) reviews the problem and reports it to an administrator for action. (Paragraphs 0021-0023). However, Fraenkel does not disclose a system that can kill a process. Harper discloses a system wherein a software packet is about to experience failure and the system administrator, upon being alerted to the failure, can initiate a graceful outage of the process. (Lines 12-23 of Column 4). It would have been obvious to one of ordinary skill at the time of the invention to combine the prior art of Fraenkel with the prior art of Harper. One of ordinary skill in the art would have been inclined because Fraenkel system discloses that the system administrator can isolate and correct the problem. Harper files the need on the system of Fraenkel by providing a mean of correcting a problem in a system, via graceful outage of a process.

***Allowable Subject Matter***

33. Claims 11-12 and 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

34. The following is a statement of reasons for the indication of allowable subject matter: Regarding claims 11 and 24: The limitation of "determining the correlations involves using a non-linear, non-parametric regression technique to determine the correlations" could not be found in the prior art of record or in any other prior art.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.

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- The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.
- The examiner can be reached at: **571-272-3654**.

36. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Scott Baderman**.

- The supervisor can be reached on **571-272-3644**.

37. The fax phone numbers for the organization where this application or proceeding is assigned are:

- **703-872-9306 for all patent related correspondence by FAX.**

38. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

39. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **571-272-2100**.

40. Responses should be mailed to:

- **Commissioner of Patents and Trademarks**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

Tim Bonura  
Examiner  
Art Unit 2114

September 10, 2006

